For example, the proposed contract purports to allow the transfer of water, under some circumstances, to others outside of the EBMUD service area. However, as noted, this violates paragraphs 6 and 7 of the decree. EBMUD/Reclamation have, in justifying the Draft New Contract, dismissed this view based upon an argument that these provisions would only be operative if the decree were modified and, indeed, EBMUD has indicated that it will seek such modification. The problem is that any modification of the Physical Solution along these lines would rend the fabric of the entire decision. The Court stated:

> It is the respect for the unknown which dictates the continuing validity of the sanitary survey as one of the legitimate bases for public health decisions. And if defendant's risk assessment proves prophetic, then it would have been a judicial act of exceptional irresponsibility not to have taken the safer course. This is particularly true given the formulation of a physical solution which can, in this court's view, protect the public trust values which have been advanced as the other side of the equation.
>
> *It does bear emphasis, however, that the essence of East Bay MUD's position in this case is the importance of drinking water of the highest quality and not merely the convenient availability of that water. Without the issue of water quality, East Bay MUD's position would be greatly attenuated, and possibly could not withstand the logic of plaintiff's position that multiple uses of the American River water constitute the most reasonable and highest beneficial use under Article X, section 2. Thus, it needs to be emphasized that the diversion of water to East Bay MUD is for the use of East Bay MUD customers only, and shall not be used as a "marketable commodity" for transport to agricultural or other uses.* As will be emphasized in the court's order, any diversion permitted in this case will be strictly conditioned upon utilization of the water by East Bay MUD customers for urban uses and only under circumstances where the water can be used for those intended purposes. Were it possible to further limit the utilization for drinking water purposes, the Court would seriously consider that as an option. (Emphasis added.)

By way of further example, the Court was aware that allowing EBMUD to divert water at Nimbus, even at restricted flow levels, could affect the availability of water that might later, absent an EBMUD diversion, otherwise be available to the LAR. As a consequence, it addressed the question of carryover storage in the Physical Solution and stated in the body of the opinion that:

> Additionally, the Court will require that 60,000 AFA will be maintained in reserve from mid-October through June for releases in